# Yong Toi Mee & Anor v Malpac Holdings Bhd & Ors

HIGH COURT (KUALA LUMPUR) — WRIT SUMMONS NO WA-22NCC-326–09 OF 2016
MOHD NAZLAN J
13 FEBRUARY 2018

*Civil Procedure — Payment out of court — Separate earlier proceedings — Plaintiffs applied for monies deposited in earlier proceedings be ordered to be paid to plaintiffs in satisfaction of judgment entered against defendants in related suit — Payment out of court — Second defendant objected — Second defendant argued that plaintiffs should have agreed with second defendant's earlier application for payment out of court — Whether defendants' earlier application an attempt to achieve stay of execution of judgment by backdoor — Whether right of judgment creditor properly exercised — Whether present court correct forum for payment out application — Rules of Court 2012 O 49 r 9*

This was an application by the plaintiffs for monies that had been deposited into the court by the second defendant in earlier proceedings be ordered to be paid to the plaintiffs in satisfaction of judgment entered against the defendants in a related suit. In the Ipoh High Court Civil Suit No 22–109 of 2007 ('the Suit 109'), the plaintiffs had paid the sum of RM49m into the court for the benefit of the second defendant. In the second proceeding in Kuala Lumpur High Court Suit No 22NCC-326–09 of 2016 ('the Suit 326'), the court ordered payment by the defendants to the plaintiffs of the sum of RM30,485,678.38 together with interest. A day after the decision in the Suit 326 was given, the second defendant by way of an application in the Suit 109 ('encl RF3'), sought the payment out of the court for the sum of RM49m. The plaintiffs then made the present application seeking the following reliefs: (a) an order that monies in Ipoh High Court standing to the credit of the second defendant was sufficient to satisfy in full or part of the judgment in the Suit 326; and (b) an order directing that the payment out of the said monies in court paid to the solicitors of plaintiffs. In its opposition to the present application, the second defendant contended that the plaintiff should have agreed to the second defendant's own application for payment out of court in the Ipoh High Court which had been filed earlier in time. The second respondent argued that said application, ie encl RF3, was one that specified to be on the basis of O 90 r 9 of the Rules of Court 2012 ('the ROC').

**Held**, allowing the plaintiff's application with costs:

(1) The defendants application in encl RF3 and their draft consent order were conveniently fashioned to be cloaked under the guise of the general

provisions of O 90 r 9 of the ROC which in truth sought to achieve the effects of a stay of the execution of the judgment against them in Suit 326. In reality, there was not even any application filed for stay by the defendants. Thus, the proposal as envisaged by the terms of the draft consent order was one that the plaintiffs could legitimately refuse and the defendants resistance against the present application by the plaintiffs under O 49 r 9 of the ROC could not be sustained (see paras 18 & 21).

(2) The plaintiffs were merely exercising their rights to have the judgment granted in their favour satisfied. The plaintiff's pursuit of the present application to execute the judgment by resorting to O 49 r 9 of the ROC was entirely a valid and proper exercise of its right as a judgment creditor (see para 23).

(3) The present application was correctly filed before the present court for this court was also the court which granted judgment in Suit 326 which was now sought to be executed by the plaintiffs who secured the judgment in the same Suit 326. Any application for an attachment of monies paid into a different court might rightly be made to the court which granted judgment that gave rise to the execution thereof for it established the status of judgment creditor for the winning party who entitled to have the judgment executed. In any event, it was a valid legal proposition that there should not be any undue restrictions as to which court ought to have that jurisdiction under O 49 r 9 of the ROC (see paras 31–32).

**[Bahasa Malaysia summary**

Ini adalah satu permohonan oleh plaintif untuk wang yang telah didepositkan kepada mahkamah oleh defendan kedua dalam prosiding sebelumnya dibayar kepada plaintif-plaintif sebagai pematuhan penghakiman yang dimasukkan terhadap defendan-defendan dalam tindakan guaman yang berkaitan. Dalam tindakan Guaman No 22–109 Tahun 2007 di Mahkamah Tinggi Ipoh ('Guaman 109'), plaintif-plaintif telah membuat pembayaran sebanyak RM49 juta kepada mahkamah untuk faedah kepada defendan kedua. Di dalam prosiding kedua Guaman No 22NCC-326–09 Tahun 2016 di Mahkamah Tinggi Kuala Lumpur ('Guaman 326'), mahkamah telah mengarahkan defendan-defendan untuk membuat bayaran kepada plaintif-plaintif sebanyak RM30,485,678.38 bersama-sama faedah. Sehari selepas keputusan dalam Guaman 326; tersebut diputuskan, defendan kedua telah membuat permohonan melalui Guaman 109 tersebut ('lampiran RF3'), memohon agar bayaran sebanyak RM49 juta dikeluarkan daripada mahkamah. Plaintif-plaintif kemudiannya membuat permohonan semasa memohon relif-relif berikut: (a) satu perintah supaya wang di Mahkamah Tinggi Ipoh berada dalam kredit defendan kedua adalah mencukupi untuk memenuhi secara keseluruhan atau sebahagian daripada penghakiman dalam Guaman 326; dan (b) satu arahan supaya bayaran daripada mahkamah

tersebut diberikan kepada peguamcara plaintif. Dalam mencabar pemohon semasa, defendan kedua mengatakan bahawa plaintif sepatutnya bersetuju dengan permohonan defendan kedua mengenai pembayaran keluar daripada Mahkamah Tinggi Ipoh yang telah difailkan lebih awal. Responden kedua permohonan tersebut iaitu dalam lampiran RF3 adalah mengikut peruntukan A 90 k 9 Kaedah-Kaedah Mahkamah 2012 ('KKM').

**Diputuskan**, membenarkan permohonan plaintif dengan kos:

(1) Permohonan defendan-defendan seperti mana dalam lampiran RF3 dan draf persetujuan mereka telah dirangka seakan-akan untuk memenuhi keperluan proviso A 90 k 9 KKM secara amnya di mana satu penggantungan penghakiman terhadap defendan-defendan akan tercapai sebagai kesan dalam Guaman 326. Realitinya, tiada permohonan penggantungan penghakiman difailkan terhadap defendan-defendan. Justeru, cadangan yang telah dibuat sepertimana yang telah dirangka dalam draf persetujuan adalah boleh ditolak oleh plaintif dan hujahan defendan yang tidak bersetuju dengan permohonan plaintif di bawah A 49 k 9 KKM tidak boleh diterima (lihat perenggan 18 & 21).

(2) Plaintif-plaintif telah menggunakan hak mereka untuk memastikan penghakiman yang berpihak kepada mereka dipenuhi dan dipatuhi. Permohonan semasa plaintif sebagai langkah pelaksanaan penghakiman dengan mengguna pakai A 49 k 9 KKM adalah sah dan mengikut saluran yang betul sebagai hak pemiutang penghakiman (lihat perenggan 23).

(3) Permohonan semasa telah difailkan dengan sah dan teratur di mahkamah semasa yang juga mahkamah yang memutuskan penghakiman dalam Guaman 326 di mana plaintif ingin membuat permohonan pelaksanaan penghakiman sepertimana yang diputuskan dalam Guaman 326. Apa-apa permohonan untuk melampirkan bayaran wang kepada mahkamah yang berbeza boleh dibuat kepada mahkamah di mana penghakiman telah memihak kepada pemiutang penghakiman sebagai pihak yang berjaya dalam pelaksanaan penghakiman tersebut. Dalam apa-apa cara, adalah menjadi satu proses yang mengikut lunas perundangan di mana tiada halangan untuk mahkamah menggunakan bidang kuasa di bawah A 49 k 9 KKM (lihat perenggan 31–32).]

**Notes**

For a case on separate early proceedings, see 2(4) *Mallal's Digest* (5th Ed, 2017 Reissue) para 7185.

**Cases referred to**

*Brereton v Edwards* (1888) 21 QBD 488, CA (folld)
*Emmott v Michael Wilson & Partners Ltd* [2017] EWCA Civ 367, CA (refd)

*Malpac Capital Sdn Bhd v Yong Toi Mee & Ors and another appeal* [2017] 1 MLJ 262; [2016] 8 CLJ 613, CA (refd)
*Wee Choo Keong v MBF Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217, SC (refd)
*Yong Toi Mee & Anor v Malpac Capital Sdn Bhd & Anor* [2013] 6 MLJ 453; [2013] 8 CLJ 725, FC (refd)
*Yong Toi Mee & Anor v Malpac Holdings Bhd & Ors* [2017] MLJU 1674, HC (refd)

**Legislation referred to**

Rules of Court 2012 O 49, O 49 rr 2, 9, O 90 rr 8, 9, Form 98
Rules of Supreme Court 2009 [UK] Chapter 72.10

*P Gananathan (Olivia Loh, Ng Choo Beng and Yeoh Kai Ying with him) (Ng Choo Beng R Naidu & Partners) for the plaintiffs.*
*SH Leong (Leong & Partners) for the second defendant.*

**Mohd Nazlan J:**

INTRODUCTION

**[1]** This is an application by the plaintiffs, documented in encl 90, for monies that had been deposited into the Ipoh High Court by the second defendant in an earlier proceedings be ordered to be paid to the plaintiffs in satisfaction of the judgment entered against the defendants in a related suit.

**[2]** At the conclusion of the hearing, I allowed the application and stated the key reasons for the same. This judgment contains the full reasons for my decision.

KEY BACKGROUND FACTS

**[3]** There is a fairly long history of litigious dispute between the parties herein. For present purposes however, I need refer to only two of such suits.

**[4]** The first is the Ipoh High Court Civil Suit No 22–109 of 2007 ('Suit 109'). Litigated all the way to the Federal Court, judgment was given in favour of the plaintiffs (see the Federal Court decision in *Yong Toi Mee & Anor v Malpac Capital Sdn Bhd & Anor* [2013] 6 MLJ 453; [2013] 8 CLJ 725). Notwithstanding, various supplementary applications had also been subsequently made in respect of the judgment. This Suit 109 has ended with the refusal of leave for certain of the defendants herein to appeal to the Federal Court against the decisions of the Court of Appeal on the supplementary orders applications. The decision of the Court of Appeal may be found in

*Malpac Capital Sdn Bhd v Yong Toi Mee & Ors and another appeal* [2017] 1 MLJ 262; [2016] 8 CLJ 613.

**[5]** The second proceeding is a claim for damages for the torts of abuse of process and conspiracy against the defendants filed in Kuala Lumpur High Court Suit No WA-22NCC-326–09 of 2016 ('Suit 326'), which concerned issues arising from the same subject matter in Suit 109. I had ruled Suit 326 for the plaintiffs. The decision, which is pending appeal, may be found in *Yong Toi Mee & Anor v Malpac Holdings Bhd & Ors* [2017] MLJU 1674. The instant application is made under this Suit 326.

**[6]** The decision in Suit 326 was given on 31 May 2017, which ordered payment by the defendants to the plaintiffs of the sum of RM30,485,678.38 together with interest at the rate of 5%pa from 31 May 2017. Two points of importance in this regard are first, this judgment has not been satisfied, and secondly, there is no stay of execution against the judgment.

**[7]** Much earlier, in respect of the Suit 109, the plaintiffs had on 26 February 2015, pursuant to an order of court dated 17 February 2015, made payment into court of a sum of RM49m (in satisfaction of the relevant purchase subject to the Suit 109) for the benefit of the second defendant.

**[8]** A day after I delivered decision on the Suit 326, on 1 June 2017, the second defendant by way of an application in Suit 109 filed an application at the Ipoh High Court seeking the payment out of court of the said sum of RM49m. It is the contention of the defendants that the said application in essence sought to release the said sum of RM49m (together with interest earned) to the second defendant's solicitors on terms of release which take into account the pending appeals. The defendants also stated that they were seeking the plaintiffs cooperation on the release. That application by the second defendant is pending hearing at the Ipoh High Court at the time I heard the instant application before me.

**[9]** This then led to the plaintiffs taking out the instant application on 19 July 2017 in Suit 326 instead, seeking in essence, the following reliefs:

(a) an order that the monies in the Ipoh High Court and standing to the credit of the second defendant be sufficient to satisfy in full or in part the judgment of this court in Suit 326 for the sum of RM30,458,678.38 together with interest; and

(b) an order directing that the payment out of the said monies in court be paid to the solicitors for the plaintiffs.

**[10]** This application is opposed by the second defendant. I shall next consider the arguments of the litigants and make my findings on relevant issues arising therefrom.

EVALUATION FINDINGS OF THIS COURT

**[11]** The plaintiffs instant application is premised on O 49 r 9 of the Rules of Court 2012 ('the RC 2012'). Order 49 concerns garnishment proceedings, but also provides for the attachment of the monies already paid into court standing to the credit of the judgment debtor, in satisfaction of a judgment. Order 49 r 9 reads as follows:

> 9 Money in Court (O 49 r 9)
>
> (1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the court by a notice of application for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.
>
> (2) On issuing a notice of application under this rule, the applicant shall produce the application at the office of the accountant general and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application. If the application is dismissed, the applicant shall give notice of that fact to the accountant general.
>
> (3) Unless the court otherwise directs, the notice of application shall be served on the judgment debtor at least seven days before the day named therein for the hearing of it.
>
> (4) Subject to O 70, r 23, the court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

**[12]** The primary prerequisite to the application of the provisions of O 49 r 9 is the existence of monies standing to the credit of the judgment debtor in court. The RM49m does stand to the credit of the second defendant, which is one of the judgment debtors in the instant application, arising from Suit 326. But the judgment creditor, the plaintiffs herein in Suit 326 are not competent to file garnishee proceedings to attach the said monies, because the court itself cannot, by virtue of the garnishee action, be the subject of the court proceedings. The money paid into court cannot be attached under a garnishee order. Thus the judgment creditor may instead apply to court by notice of application for an order that the monies or so much thereof to be sufficient to satisfy the judgment.

**[13]** It is in essence and substance a form of execution of judgment, where the application is being brought before the court by the judgment creditor, being the party who is entitled to file the same, for the purpose of executing and satisfying the judgment granted to the plaintiffs for their benefit, as clearly contemplated in O 49 r 9.

**[14]** I observe that in its opposition to this application, the second defendant contends that the plaintiffs should have agreed to the second defendants own application for payment out of court in the Ipoh High Court which had been filed earlier in time. The application by the second defendant is one that is specified to be on the basis of O 90 r 9 of the RC 2012. The provisions of O 90 r 9 govern procedures for payment out of court generally. It reads as follows:

> 9 Payment out of funds in Court (O 90 r 9)
>
> (1) Money paid under O 14 or 23 shall be paid out on a direction to the Accountant General in form (b) in Form 129.
>
> (2) In all other cases the person entitled to withdraw the funds shall lodge with the Accountant General a copy of the order authorizing withdrawal, and the Accountant General shall act in accordance with such order.
>
> (3) When an order directs any sums to be ascertained by the certificate of the Registrar, both the order and the certificate in form (c) in Form 129 shall be sent to the Accountant General.
>
> (4) When an order directs payment out of a fund in court of any costs directed to be taxed, the Registrar shall state in his certificate, the name and address of the person to whom such costs are payable.

## THE TRUE NATURE OF THE DEFENDANTS' OBJECTION HEREIN AND OF ITS APPLICATION IN THE IPOH HIGH COURT

**[15]** The argument of the second defendant is that it is seeking to regulate the payment of the monies out of court pending the disposal of their appeals against, among others, the decision of this court in Suit 326. As was made clear at the hearing of this application, the draft consent order made available to the court in respect of the second defendant's application at the Ipoh High Court ('encl RF3') was for the monies be paid out to the respective solicitors for the parties, with RM32m be paid out to the solicitors for the plaintiffs, and for this instant application before me (encl 90) be withdrawn.

**[16]** However, it is equally plain that the draft consent order proposed by the second defendant herein would not achieve what the plaintiffs seek to do in this encl 90, which is simply to execute judgment granted in their favour. I say this primarily because of the following two clauses in the draft consent order proposed by the defendants:

A (2) the aforesaid respective sums paid to Messrs Logan Sabapathy & Co and Messrs Ng Choo Beng R Naidu & Partners be placed in an interest bearing account *pending disposal of the Pending Appeals*;

(3) the said Messrs Logan Sabapathy & Co and the said Messrs Ng Choo Beng R Naidu & Partners are to only deal with the respective sums *upon further order of court upon the final disposal of the Pending Appeals.* (Emphasis added.)

**[17]** It is as clear as daylight that for all intents and purposes, the plaintiffs cannot be said to be able to execute judgment because the monies, to the extent they are entitled to pursuant to the judgment in Suit 326, would under the terms of the consent order, be placed in their solicitors account pending the disposal of the appeals, including against the decision in Suit 326.

**[18]** This, in my view, is quite clearly an attempt by the defendants to achieve a stay of the execution of the judgment in Suit 326 by the back door. When in fact there is no stay against, among others, the judgment in Suit 326. There was not even any application filed for stay by the defendants. Thus this proposal as envisaged by the terms of the draft consent order is one that the plaintiffs could legitimately refuse. The court too cannot assist a party who is content to pursue its rights in a fashion that borders on an abuse of the courts process.

**[19]** The plaintiff's argument that encl RF3 and the draft consent order are in truth a disguise for a stay of execution under a purported application pursuant to O 90 r 9 is therefore certainly not without merit. It appears abundantly clear that given the timing of the application in the Ipoh High Court, and considering the absence of a stay, which the defendants did not bother applying, the second defendant now seeks to withdraw the monies in court and to pre-empt and prevent the plaintiffs from executing the judgment validly granted to the plaintiffs which the defendants, the second defendant included, must no doubt abide by.

**[20]** Yet the defendants are already bound by the judgment in Suit 326. It is after all trite law that orders and judgments of the court must be treated with respect and require strict obedience, until and unless set aside (see, for example, the Supreme Court decision in *Wee Choo Keong v MBF Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217). The defendants have however not satisfied the judgment by making payment of the judgment sum despite the absence of any stay.

**[21]** The defendants application in encl RF3 and their draft consent order are conveniently fashioned to be cloaked under the guise of the general provisions of O 90 r 9 which in truth seeks to achieve the effects of a stay of the execution of the judgment against them in Suit 326. That is not acceptable. For this reason alone, the defendants resistance against this application by the

plaintiffs under O 49 r 9 cannot be sustained.

PROPER EXERCISE OF RIGHT OF JUDGMENT CREDITOR

**[22]** There is, after all, no dispute that the monies in court is the property of the second defendant. It was paid into court by the plaintiffs pursuant to a direction of the court in Suit 109 to complete a purchase transaction by the plaintiffs which the defendants then continued to resist. There was thus nothing inconsistent about the plaintiffs solicitors letter of 23 May 2017 (notwithstanding the fact that this was before the pronouncement of the judgment in Suit 326 several days after) which stated that the RM49m 'absolutely belongs' to the second defendant, when measured against their present action in filing encl 90 seeking the payment out vis a vis the same RM49m the sum to satisfy the fruits of their litigation that is the judgment in Suit 326.

**[23]** The plaintiffs are as such merely exercising their rights to have the judgment granted in their favour satisfied. And there is sufficient money in court which stands to the credit of the second defendant, being the judgment debtor, for the plaintiffs to 'attach' under O 49 r 9. The plaintiffs pursuit of the instant application to execute the judgment by resorting to O 49 r 9 is entirely a valid and proper exercise of its right as a judgment creditor.

IS THIS COURT THE CORRECT FORUM FOR THE PAYMENT OUT APPLICATION?

**[24]** The defendants however raised a pertinent question as to the correct forum for the plaintiffs to make the application under O 49 r 9. The second defendant argued that as the sum of RM49m had been paid into court, specifically, the Ipoh High Court pursuant to the order of court dated 17 February 2015 granted in Suit 109, the monies cannot be construed as 'money standing to the credit of the judgment debtor' (erroneously referred to as 'money standing to the credit of the judgment creditor' in the written submissions of the second defendant), enforceable by way of O 49 r 9 in this action before me, because the said sum should remain subject to the direction of the Ipoh High Court.

**[25]** This argument is at first blush, not unattractive. According to the second defendant, its position is supported by a recent decision of the English Court of Appeal in *Emmott v Michael Wilson & Partners Ltd* [2017] EWCA Civ 367 which was referred to the commentary of the English *White Book* on Chapter 72.10 of the Rules of Supreme Court 2009 (equivalent to our O 49 r 9 of the RC 2012) as follows:

> It has been held (unreported) that money paid into court in other pending

A proceedings is not 'money standing to the credit of the judgment debtor in court' as it remains subject to the direction of the court in those proceedings.

**[26]** I do not, however, think the objection taken by the defendants herein is meritorious. In the first place, it cannot be denied that there is no pending B proceedings in Suit 109 but for the application by the second defendant in encl RF3 for its proposal of payment out of court. The passage relied on by the defendants from the case of *Emmott v Michael Wilson & Partners Ltd* itself refers to 'money paid into court in other pending proceedings'. Order 90 r 8 which C regulates applications on transfers and payments of funds out of court also provides in para (2), that such applications must in respect of a pending cause or matter, be by way of a notice of application. Yet the second defendant filed the notice of application in Suit 109 when clearly there was nothing pending.

D **[27]** Further, as the written submissions of the defendants themselves highlighted, the judgment of Simmons LJ in that case additionally observed that although the court is not bound to make an order under the rule in favour of a judgment creditor, it is more importantly entitled to exercise its discretion on whether or not to make an order for the judgment creditor.

E

**[28]** Indeed, the case of *Emmott v Michael Wilson & Partners Ltd* itself supports the position of the plaintiffs for it was also stated thus:

> However where there is money in court standing to the credit of the judgment debtor Part 72.10 provides a simple and alternative procedure which a judgment F creditor can use.
>
> Although Part 72.2 uses the word 'may' which imports a general discretion, the circumstances in which the order is likely to be refused are limited, see for example, the editorial comment in relation to charging orders at S73.4.2 of the White Book 2017.
>
> G
>
> This provision simply prescribes how an application is to be made where a judgment creditor seeks to obtain an order for payment of a sum owed by a judgment debtor from sums in court.

H **[29]** These pronouncements give emphasis on the discretion of the court to grant such an order in respect of this straight forward and simple procedure enacted to assist a judgment creditor to seek satisfaction of judgments in their favour. It is not the intention of the law, in its application of O 49 r 9 to complicate what is essentially a legitimate effort by a judgment creditor to I enforce a judgment of the court.

**[30]** This case before me is thus no exception. In my view, O 49 r 9 is clearly one that can justifiably be invoked by the plaintiffs herein to seek the satisfaction of the judgment granted in Suit 326 (given the refusal of the second

defendant to make payment to the plaintiffs on the basis of the judgment), from the monies belonging to the judgment debtor now in court by virtue of the payment into court in Suit 109, by applying for an order of this court authorising the payment out of the same, out of the monies paid into the court in Suit 109.

**[31]** I am therefore of the view that the application herein is correctly filed before this court for this is also the court which granted judgment in Suit 326 which is now sought to be executed by the plaintiffs who secured the judgment in the same Suit 326. Any application for an attachment of monies paid into a different court may rightly be made to the court which granted judgment that gives rise to the execution thereof for it establishes, by virtue of the verdict, the status of a judgment creditor for the winning party who then becomes entitled to have the judgment executed, if not earlier satisfied by the judgment debtor.

**[32]** In any event, it is in my view a valid legal proposition that there should not be any undue restrictions as to which court ought to have that jurisdiction under O 49 r 9 of the RC 2012. This is supported by the decision of the English Court of Appeal in *Brereton v Edwards* (1888) 21 QBD 488 which dealt with the corresponding rule under the English RSC where it was stated thus:

> I think the broad principle of law that we are now deciding is this — that any judge of the High Court has power, at the instance of a judgment creditor, to make an effectual order charging the judgment debtor upon sum of money standing to the credit of the judgment debtor in the name of the Paymaster-General in an action in the chancery division.

**[33]** This observation has common sense and judicial efficacy written all over it. After all, the context is one concerning the execution of judgments. It is not about the issue of a court being seized with the jurisdiction on matters properly instituted before it. This is one which concerns execution of judgment, and an exception to a garnishee proceedings under O 49 of the RC 2012. Order 49 r 9 itself does not stipulate that the application must be made at either the court where the monies have been paid into or the court which granted judgment. Either of the courts may grant the order of attachment in the form and substance provided for under O 49 r 9. An application under O 49 r 9 can thus be made in the court into which the money has been paid, or where the judgment giving rise to the right to execute the judgment is granted. Above all, there is no real prejudice to either party as to where the application should be filed. Furthermore, in all cases of payment out, including whether pursuant to O 49 r 9 relied on by the plaintiffs or O 90 r 9 referred to by the second defendant, appropriate notification ought to be made to the office of the accountant general. It is also of relevance to note that the Form No 98 of the RC 2012 which prescribes the format for an affidavit in support of garnishee order under O 49 r 2 employs words that contemplate that the application for

garnishee is made in the court that grants the judgment. Thus in para 1 it is stated 'By a judgment (or Order) of the court given in this action'.

**[34]** Here, it is, in any event, the same court which granted the judgment presently sought to be executed. Furthermore, as stated earlier, in this instant case before me, there are also nothing still pending before the Ipoh High Court in Suit 109. That Suit 109 has concluded. Even the appeals in respect of the supplementary orders granted post judgment in the main Suit 109 had been exhausted. And Suit 109 itself is related to Suit 326. The latter was filed as a result of among others, Suit 109. The judgment in Suit 326 also takes into account the judicial decisions in Suit 109. In the exercise of my discretion under O 49 r 9 of the RC 2012, considering the justice of the case, including the history of the litigation in Suits 109 and 326 among others, an order that this court thinks just within the provisions of O 49 r 9 is one that grants the application of the plaintiffs in terms of their encl 90.

CONCLUSION

**[35]** Order 49 r 9 is manifest in para (4) in stating that the court hearing such an application may make such order with respect to the money in court as it thinks just. For the reasons that I have earlier discussed, it is my judgment that the plaintiffs have satisfactorily established their case for the payment out of court under O 49 r 9 in terms of their application in encl 90. I therefore allow the same, with costs.

*Plaintiff's application allowed with costs.*

Reported by Mohd Kamarul Anwar